

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 21 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JESUS ALVARO-DE GAMES, a.k.a.
Alvaro Gomez De Jesus,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-74962

Agency No. A92-132-861

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 15, 2008**

Before: B. FLETCHER, FISHER and PAEZ, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
denial of petitioner's motion to reopen immigration proceedings.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Petitioner's motion to reopen was filed more than fifteen years after the BIA's May 4, 1992 decision ordering him removed, far beyond the ninety days allowed by regulation. *See* 8 C.F.R. § 1003.2(c)(2). The BIA therefore did not abuse its discretion in denying petitioner's motion to reopen as untimely. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). Accordingly, respondent's motion for summary disposition in part is granted because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir.1982) (per curiam).

To the extent that petitioner seeks review of the BIA's decision not to reopen proceedings sua sponte in order to consider his argument that, under current Ninth Circuit caselaw, the government did not meet its burden of proof concerning the conviction at issue in his deportation proceedings, this court lacks jurisdiction over this petition for review. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002). Respondent's motion to dismiss in part is granted.

All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION DISMISSED in part; DENIED in part.